

SUPREME COURT OF THE STATE OF WASHINGTON

KELLY L. SHAFER,

Respondent,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES OF THE STATE OF  
WASHINGTON,

Petitioner.

STATEMENT OF  
ADDITIONAL  
AUTHORITIES POST  
ORAL ARGUMENT

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
2009 MAR 17 AM 7:45  
BY RONALD R. CARPENTER  
CLERK

The Department of Labor and Industries submits as additional  
authorities:

1. *In re Daniel Kelp*, BIIA Dec., 86 0686, 86 0688 (1988 WL  
169323 (1988), *affirmed*, *Kaiser Alum. & Chem. Corp. v. Dep't of Labor  
& Indus.*, 57 Wn. App. 886, 889, 790 P.2d 1254 (1990). This Significant  
Decision of the Board of Industrial Insurance Appeals states at 3:

The question of whether a protest has been timely filed  
requires the proof of two critical dates. *The first is the date  
the Department order was communicated to the aggrieved  
party. RCW 51.52.050 and 51.52.060.* The second is the  
date the protest was filed with the Department. RCW  
51.52.050 (emphasis added).

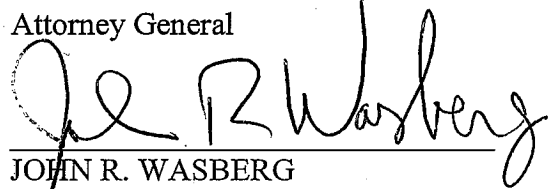
2. *Marley v. Dep't of Labor & Indust.*, 125 Wn.2d 533, 537,  
886 P.2d 189 (1994) ("The doctrine of claim preclusion applies to a final  
judgment by the Department *as it would to an unappealed order* of a trial

ORIGINAL

court.”) (emphasis added). This authority responds to the statement at oral argument by Ms. Shafer (approximately 31 minutes) distinguishing between what *Marley* holds are identically claim-preclusive circumstances: (1) a case where a party or affected person appeals to the Board of Industrial Insurance Appeals upon receipt of a Department order and loses that appeal; and (2) a case where a party or affected person does not appeal to the Board upon receipt of a Department order.

RESPECTFULLY SUBMITTED this 16th day of March, 2009.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in dark ink, appearing to read "JR Wasberg", is written over a horizontal line.

JOHN R. WASBERG  
Senior Counsel  
WSBA No. 6409  
(206) 464-6039